FILED
JUL 19 2000
CLERK

(3)

No. 99-1964

In The

Supreme Court of the United States

TIMOTHY BOOTH,

Petitioner,

v.

C.O. CHURNER, *et al.*,

Respondents.

On Petition For A Writ Of *Certiorari* To The United States Court Of Appeals For The Third Circuit

REPLY IN SUPPORT OF PETITION FOR A WRIT OF *CERTIORARI*

NANCY WINKELMAN*
RALPH N. SIANNI
Counsel for Petitioner
**Counsel of Record*

SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 751-2000

8 pp

TABLE OF CONTENTS

Page

PETITIONER'S REPLY BRIEF 1

ARGUMENT IN REPLY..... 1

I. THIS CASE WAS PRESENTED TO THE COURT OF APPEALS AS A "MONEY DAMAGES ONLY" CASE BECAUSE MR. BOOTH'S CLAIMS FOR INJUNCTIVE RELIEF ARE MOOT 1

II. THE DISTINCTION THAT RESPONDENTS DRAW BETWEEN "MONEY DAMAGES ONLY" CASES AND "MIXED" CASES IS LEGALLY IRRELEVANT AND DOES NOT AFFECT THE EXISTENCE OF THE CIRCUIT CONFLICT HERE..... 3

CONCLUSION 6

TABLE OF AUTHORITIES

CASE

Nyhuis v. Reno, 204 F.3d 65 (3d Cir. 2000) 4, 5

STATUTE

42 U.S.C. § 1997e(a) 3, 4, 5

PETITIONER'S REPLY BRIEF

In their opposition to the petition for a writ of *certiorari*, respondents concede that there is a conflict among the circuits on the question presented in the petition. Given that clear conflict, respondents do not even attempt to argue that the question presented is not worthy of this Court's consideration, and, by implication, concede that it is. Instead, respondents attempt to avoid this Court's review of this important issue of federal statutory interpretation by making the factually erroneous and legally irrelevant argument that the question presented was not presented to or decided by the courts below. Petitioner Timothy Booth files this reply brief in order to show that: (1) as a matter of fact, this case was a "money damages only" case when it reached the Court of Appeals, not a "mixed" case, because Mr. Booth's injunctive claims were moot; and (2) as a matter of law, the distinction that respondents draw between "money damages only" cases and "mixed" cases is irrelevant here.

ARGUMENT IN REPLY

I. THIS CASE WAS PRESENTED TO THE COURT OF APPEALS AS A "MONEY DAMAGES ONLY" CASE BECAUSE MR. BOOTH'S CLAIMS FOR INJUNCTIVE RELIEF ARE MOOT.

Respondents pin their entire argument on their characterization of this case as a "mixed" case, as to which

they assert *certiorari* is not warranted.[1] However, respondents' contention that this is a "mixed" case is factually erroneous because Mr. Booth's claims for injunctive relief are moot, in view of his transfer from the prison at which he allegedly was beaten to another prison. Only his claims for money damages remained viable in the Court of Appeals, and only his claims for money damages remain viable now.

Counsel for Mr. Booth conceded in both the briefing and oral argument in the Court of Appeals that Mr. Booth's injunctive claims were mooted by his transfer. In the form complaint that he filed in the district court, Mr. Booth had sought compensatory damages, a "preliminary injunction," and a "protection order for transfer to another prison as both my safety and life is at stake." Pet. App. 4a. In a handwritten document filed with that form complaint, he sought money damages and also stated, "I need out of this jail before they kill me. And I want each and every officer to be punished for assaulting me. Please, I'm in fear of my life." *Id.* 5a. Then, Mr. Booth was, in fact, transferred to another prison, thus mooting his injunctive claims.

Respondents seem to accept that much, but argue that Mr. Booth sought other injunctive relief in addition to a transfer, and, thus, that not all of his injunctive claims were mooted by the transfer. While it is true that in district court filings subsequent to the filing of his complaint, Mr. Booth sought other types of injunctive

---

[1] Mr. Booth does not dispute that most of the courts of appeals agree that administrative exhaustion is required in "mixed" cases.

relief (including "an injunction to stop the continuous beating," an order "to get operation," an order to improve the prison law library, an order to hire paralegal assistance, and an order to disclose prison records, *see id.* 5a), none of these were actually part of his complaint or claims for relief. Accordingly, they should not control the section 1997e(a) exhaustion inquiry.

Moreover, even if Mr. Booth had included these additional requests as actual claims for relief in his complaint, most of them were resolved or mooted by his transfer to another prison. As to his request for a shoulder operation, this has been mooted by the passage of time, and counsel can represent that Mr. Booth no longer seeks such an operation. Thus, counsel's concession in the Court of Appeals that only Mr. Booth's money damages claim remained and that his injunctive claims were moot is conclusive as to both what was presented to the Court of Appeals and what this case involves.

Accordingly, respondents are wrong to attempt to dissuade this Court from considering the issue presented – an issue they agree is worthy of this Court's review – by depicting this case as a "mixed" case. It is, in fact, a case that seeks only monetary damages.

II. THE DISTINCTION THAT RESPONDENTS DRAW BETWEEN "MONEY DAMAGES ONLY" CASES AND "MIXED" CASES IS LEGALLY IRRELEVANT AND DOES NOT AFFECT THE EXISTENCE OF THE CIRCUIT CONFLICT HERE.

Even assuming *arguendo* what we have just disproved – that this is a "mixed" case – this case nonetheless would

be an appropriate vehicle to resolve the conflict among the circuits concerning "money damages only" cases. As far as the Third Circuit is concerned, there is no distinction between "money damages only" cases and "mixed" cases, and thus this case presents an appropriate vehicle to resolve the conflicts among the circuits.

In *Nyhuis v. Reno*, 204 F.3d 65, 71 (3d Cir. 2000) (the Third Circuit decision that preceded this decision), the Court of Appeals made crystal-clear that its holding that section 1997e(a) "completely precludes a futility exception to its mandatory exhaustion requirement" applies "under either the across-the-board exhaustion approach or the mixed-claim approach." According to the Court of Appeals, "the PLRA rendered, for the most part, irrelevant the distinction that [prior cases] drew between mixed claim actions and those involving requests for money damages." *Id.* at 71 n.7. Thus, whether Mr. Nyhuis had requested only monetary damages or both money damages and injunctive relief, the Court of Appeals' holding would have remained the same.

As a result, in the present case, the Court of Appeals did not even mention the "mixed" claim distinction that the Commonwealth now presses. Although the Court of Appeals in its factual recitation referred to Mr. Booth's injunctive claims (while neglecting to mention that those claims were mooted by his transfer), its legal analysis did not turn in any way, shape, or form on the existence of live injunctive claims – perhaps because there were none, or perhaps because the existence of live injunctive claims would not have affected the Court's analysis or holding in the least.

In short, the law of the Third Circuit is that, "the PLRA amended section 1997e(a) in such a way as to make exhaustion of all administrative remedies mandatory – whether or not they provide the inmate-plaintiff with the relief he says he desires in his federal action." *Nyhuis*, 204 F.3d at 67 (quoted in *Booth*, *see* Pet. App. 22a). The Court of Appeals did not hold – as respondents now would recharacterize the decision – that prisoners who present "mixed" claims must exhaust administrative remedies: it held that prisoners always must exhaust administrative remedies. Thus, the distinction that respondents press is not only factually erroneous, but also legally irrelevant.

In short, the asserted distinction does not affect the existence of the circuit conflict. Even assuming that Mr. Booth's injunctive claims did remain part of this case, the circuit conflict that he identifies would persist. This is because the courts that require prisoners to exhaust administrative remedies regardless of whether those remedies can provide the relief sought necessarily will apply that rule in both "money damages only" and "mixed" cases. Accordingly, in both "money damages only" and "mixed" cases, the Third, Sixth, Seventh, and Eleventh Circuits always will require exhaustion. These circuits stand in direct conflict with the Fifth, Ninth, and Tenth Circuits, which never require exhaustion of "money damages only" cases, regardless of what might be their rule with respect to "mixed" cases. Thus, the distinction that respondents draw, even if it were factually correct, does not affect the existence of the circuit conflict here.

CONCLUSION

For all the above reasons, as well as those set forth in the petition for a writ of *certiorari*, petitioner Timothy Booth respectfully requests that this Court grant his petition for a writ of *certiorari* to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

NANCY WINKELMAN*
RALPH N. SIANNI
Counsel for Petitioner
**Counsel of Record*

SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 751-2000

Dated: July 19, 2000.